1771.

SUPREME COURT OF THE UNITED STATES.

No. 126.

ROBERT RUFFIN BARROW, PLANTIFF IN ERROR.

vs.

JOSIAH REAB.

IN ERROR TO THE CIRCUIT COURT U. S., FOR THE DISTRICT OF LOUISIANA.

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UNITED STATES OF AMERICA,
District of Louisiana:

JOSIAH REAB
vs.
ROBERT R. BARROW. } No. 1319.

Circuit court of the United States, for the fifth circuit and district of Louisiana.

Pleas and proceedings before the honorable the judges of the circuit court of the United States, for the fifth circuit and district of Louisiana, at a circuit court of the United States, for the circuit and district aforesaid, begun and held at New Orleans, in said district, on the tenth day of March, A. D. 1847.

Be it remembered, that heretofore, to wit, on the 20th day of March, A. D. 1845, came the said Josiah Reab, by his counsel, Thomas Slidell, and filed in the clerk's office of said court his petition against the said Robert R. Barrow, which is in the words and figures following, to wit:

To the honorable the judges of the circuit court of the United States, in and for the fifth judicial circuit, holding sittings in the eastern district of Louisiana and at the city of New Orleans.

The petition of Josiah Reab respectfully shews, that your petitioner is a citizen of the State of Connecticut, residing at New Haven therein. That Robert R. Barrow, the defendant in this cause, is a citizen of the State of Louisiana, and resides in the parish of Terrebonne therein. That the said Robert R. Barrow is justly indebted to your petitioner in the sum of three thousand seven hundred and fifty-five dollars and seven and a half cents, with interest thereon from the date of judicial demand; for this, to wit, that heretofore, to wit, on or about the 5th day of February, 1845, said defendant, through his lawfully authorized agent, J. R. Conner, of New Orleans, did, at New Orleans aforesaid, contract to sell, and [did] sell, to your petitioner, (35,000) thirty-five thousand gallons of molasses, at the rate of twelve and a half cents per gallon, to be delivered at Field's Mill, on the bayou Lafourche, said molasses being represented as the crops of two plantations owned in the State by the said defendant, one being called the Myrtle Grove plantation, and the other being called the Home plantation or Home Place; and it being expressly understood and agreed, between plaintiff and defendant, that if the crops of said two plantations should not amount to the said stipulated quantity of 35,000 gallons, that the said defendant would make up and deliver said quantity, so as to give said plaintiff that quantity. That, in pursuance of said contract, the petitioner did pay on ac-

count, to said Barrow, through his lawfully authorized agent, J. R. Conner, aforesaid, and at New Orleans aforesaid, the sum of five hundred dollars, and did accordingly make all necessary arrangements for a vessel, agents, and servants, to go to the said Field's Mill, to receive the said molasses, and did receive from the said defendant, through his said agent, an order for the delivery of said molasses, and did accordingly send a vessel, with all necessary barrels and other means and arrangements, to receive the said molasses at the place appointed; but that, nevertheless, the said defendant, disregarding his undertaking and contract aforesaid, did wholly neglect and refuse to comply with his said contract, though duly required so to do, and though the said plaintiff was ready and willing, and did tender the performance of all and singular the stipulations of said contract on the part of this petitioner stipulated to be done and performed. That, in fact, the said Barrow, disregarding the said contract, did thereafter sell and deliver his crops of molasses, of and upon said plantations, to other persons, and refused in any degree to comply with his contract so with petitioner made.

And your petitioner further shews that the market price of molasses has greatly advanced since the making of said contract with said Barrow, to wit, to the extent of six and a half cents per gallon, so that now, at the date of this suit, and for some days past, the value of said molasses, at the place aforesaid of delivery, would be nineteen cents per gallon, whereby your petitioner has sustained great loss and damage, to wit, the sum of $2275; that moreover this petitioner has sustained other losses, expenses, and damages, as the same are fully and distinctly set forth in a certain statement of account hereunto annexed as part hereof, all the items whereof are reasonable and just, and the items therein charged as disbursements have been truly disbursed and paid out by this petitioner, and for the payment of all which items of disbursement, loss, and damage, the said defendant is responsible to this petitioner, and which he, said defendant, hath been amicably requested to pay to this petitioner, but refuses so to do.

Wherefore the petitioner humbly prays that said defendant, Robert R. Barrow, be cited to appear and answer this petition, and that, after due proceedings, the said defendant be condemned to pay to this petitioner the said sum of three thousand seven hundred and fifty-five dollars and seven and a half cents with interest from the date of judicial demand, and costs of suit; and petitioner asks all other lawful relief.

THOMAS SLIDELL, *Att'y for Pl'ff.*

Robert R. Barrow, esq., in account current with Josiah Reab, Dr.

1845,		
Feb'y 28	Draying 305 casks to brig St. Patrick - -	$4 57½
	Labor and loading casks - - -	1 50
March 4	Langlin's bill, as cooper on board brig St. Patrick, and passage from the St. Patrick, at Field's Mill, to New Orleans - -	29 00
	Merritt Clarke, expenses going to your Home Place, so called - - - -	15 00
	Captain E. Williams, damage in not giving him a freight of molasses, owing to your not delivering the 35000 gallons purchased of you through your agent - - -	350 00
	R. M. Clark, jr., expenses on account of said neglect of delivering the 35000 gallons molasses - - - - -	8 50
	Freight paid on empty casks from Field's Mills, taken there to receive the 35000 gallons molasses - - - - -	75 00
	Cash paid in advance on the purchase of the 35000 gallons molasses; money paid to your agent, J. R. Conner - - -	500 00
	Loss on casks by depreciation in value, at least 4 per cent., $905 - - - -	362 00
	Wm. Patten, bill for services on board brig St. Patrick, and going to receive the 35000 gallons molasses which I purchased from you, and you would not deliver - - -	60 50
March 18	Difference in price of molasses, 35000 gallons molasses, bought at 12½ c., present price 19 c., difference 6½ c. per gallon - -	2275 00
	Errors and omissions excepted.	$3681 07½
	New Orleans, 18*th March*, 1845.	
	JOSIAH REAB.	
	Errors in William Patten's bill - -	13 00
	Omission, in charge of storage 10 months, at 2 c. per month on 305 casks, which petitioner will be unable to use till coming season -	61 00
		$3755 07

The defendant having been duly cited, afterwards to wit, on the 22d day of April, 1845, E. Stevens, esq., defendant's counsel, came into court, and filed the following answer:

REAB, vs. BARROW.

To the honorable the circuit court of the United States, fifth judicial circuit and eastern district of Louisiana :

The answer of Robert Ruffin Barrow, the defendant in the above entitled suit, respectfully represents, that he denies each and every allegation, averment, and charge, contained in the petition on file in said suit, and on the trial will require strict legal evidence thereof.

Respondent specially avers, that said J. R. Conner was not his agent as alleged in said petition; that he was not authorized to make the contract or sale alleged in said petition; and respondent further avers and says, that he is not liable to said Reab as charged in said petition.

Wherefore, respondent prays that plaintiff's demand be rejected, and judgment be rendered in favor of the respondent; that he be hence dismissed with costs, and for general and equitable relief in the premises, and for trial by jury.

L. JANIN,
E. STEVENS,
Attorneys of respondent, per E. Stevens.

And afterwards, to wit, on the 9th day of March, A. D. 1847, the following entry of record was made on the minutes:

JOSIAH REAB, vs. R. R. BARROW. } 1319.

On this day came the parties, by their attorneys, Wm. C. Micon, esq., for the plaintiff, and John Claiborne, esq., for the defendant; and thereupon came a jury, to wit: John Pleffer, F. M. Bensick, S. C. Guinault, J. Emanuel, S. Cucullu, P. Queronse, O. H. Bliss, Robt. Kerr, A. Chopard, M. Bock, John Donovan, and Adam Bush, who were sworn well and truly to try the issue joined between the parties, and a true verdict give according to the law and evidence; when the court appointed S. Cucullu their foreman; when, after hearing the evidence and argument of counsel, the jury retired to their room, under charge of the court, to consider of their verdict.

When it having been communicated to the court, at the hour of 5 o'clock, P. M., that it was doubtful that the jury could agree, by consent of counsel the court granted permission to the jury to return a sealed verdict; when, after a short consultation, a sealed verdict was duly delivered to the clerk of this court, and the jury discharged until to-morrow, at 10 o'clock, A. M.

And on the same day the defendant, by his counsel, filed the following bill of exception:

JOSIAH REAB,
vs.
R. R. BARROW.

Circuit court of the United States, for the fifth judicial circuit and district of Louisiana.

Be it remembered, that on the trial of this cause, to wit, on the 9th day of March, 1847, the plaintiff offered in evidence, attached to the deposition of William C. Patten, a written instrument in the words following:

"Mr. R. R. Barrow, or manager, will deliver to Mr. Josiah Reab, or order, the molasses on Myrtle Grove, as well as the production of the Home place, or residence, (said molasses to be delivered in casks, to be furnished by the purchaser at Field's mills, and oblige, &c.

J. R. CONNER."

Upon which was this endorsement:

"Deliver to Mr. William Patton. JOSIAH REAB "

Written on the face, by overseer of the defendant, in pencil:

"The molasses has all been shipped from Myrtle Grove and the residence. N. L. F. MUNROE."

And after the evidence had been given to the jury by both parties, the defendant, through his counsel, requested the court to charge the jury, that in order to recover damages for the alleged failure of the defendant to deliver the article sold by his alleged agent, as set forth in the plaintiff's petition, it would be necessary for him to shew that a demand in writing, or in one of the other modes prescribed by article 1905 of the Louisiana code, had been made upon him for the delivery of the article sold by the vendee, or some person authorized, and that he had been put in default according to the terms of the said article 1905. Whereupon the court charged the jury, that if they should be satisfied that there had been a sale, and that the instrument aforesaid was a memorandum of the sale, with the endorsement of the vendee for the delivery of the thing sold, and that the same had been presented to the defendant or his authorized agent, that such would be a demand in writing under the terms of the article 1905 of the Louisiana code.

To which opinion and charge of the court the defendant, through his counsel, excepted, and prayed leave of the court that said exception be made of record, and that he have his bill of exception thereto; which leave was granted by the honorable court, and this, the bill of exception of the defendant to the said charge of the court, was then and there signed and sealed by the honorable court.

[L. S.] THEO. H. McCALEB,
U. S. Judge.

And afterwards, to wit, on the 10th day of March, A. D. 1847, the following final judgment was entered of record on the minutes of said court:

JOSIAH REAB
vs.
R. R. BARROW. } 1319.

This case having been argued before the court, and the jury empannelled and sworn to try the issue joined between the parties on the 9th instant, and said jury *and* having delivered to the clerk of this court a sealed verdict in this case on said day, after the adjournment of the court, appeared this day in open court the respective parties, plaintiff and defendant, by their counsel, and the presence of said jury being waived by counsel, on motion of Benjamin and Micon, esqs., of counsel for plaintiff, the sealed verdict rendered by said jury herein on the 9th instant was ordered to be opened and read, which said verdict was as follows:

"Verdict in favor of plaintiff for three thousand dollars, with interest.

SERAPHIN CUCULLU, *Foreman*.

Whereupon, it was considered by the court, be, and the same is hereby, recorded, and that plaintiff, Josiah Reab, do have and recover judgment against defendant, Robert Ruffin Barrow, for the sum of three thousand dollars, with interest thereon, at the rate of 5 per cent. per annum, from judicial demand, the 29th day of March, A. D. 1845, till paid; and the costs of this suit to be taxed.

Judgment rendered March 10, 1847.

Judgment signed March 31st, 1847. J. McKINLEY.

And afterwards, to wit, on the seventh day of April, 1847, the defendant, by his counsel, filed the following petition for writ of error:

JOSIAH REAB
vs.
R. R. BARROW. }

To the honorable the judges of the circuit court of the United States, holden in and for the fifth judicial *judicial* circuit and district of Louisiana.

The petition of Robert Ruffin Barrow, the defendant in the above entitled suit, lately decided by your honorable court, sitting in and for the district of Louisiana, respectfully represents, that judgment has been rendered by your honorable court in the above entitled suit against your petitioner, and in favor of said Reab, for the sum of three thousand dollars, with interest and costs; that said judgment was rendered on the law side of the court, and the same has become final; that petitioner is advised there is error in said judgment to his prejudice.

Wherefore, the premises considered, petitioner prays that your honor will grant him a writ of error, operating a supersedeas to said judgment, returnable to the Supreme Court of the United States on the first Monday of December next, on petitioner's giving bond, with good and sufficient security, in such sum as your honor shall deem sufficient, conditioned according to law, and on his complying with the requisitions of the law in such case made and provided. E. STEVENS,

Attorney for Petitioner.

Order endorsed thereon:

Be it so. THEO. H. McCALEB, *U. S. Judge*.

Assignment of errors filed same day.

R. R. BARROW, plaintiff in error,
vs.
JOSIAH REAB, defendant in error.

Fifth circuit court of the United States, district of Louisiana.

Into court, by the undersigned, his counsel, comes Robert Ruffin Barrow, the plaintiff in error, and avers that there are many errors to his great injury in the proceedings, verdict, and judgment in the above entitled suit; that the verdict and judgment should have been in favor of him, the said Barrow, as will fully and at large appear by inspection of the record and proceedings in said suit, and which said errors will be specially and specifically assigned. Wherefore said Barrow prays that the verdict be set aside, and the judgment thereon be annulled and reversed, and judgment be rendered in his favor and against the defendant in error.

E. STEVENS,
Attorney of plaintiff in error.

And afterwards, to wit, on the same day, April 7th, 1847, the following bond for writ of error was filed in the clerk's office:

Know all men by these presents, that we, R. R. Barrow, as principal, and Charles A. Jacobs, as surety, are held and firmly bound unto Josiah Reab in the full sum of six thousand dollars, to be paid to the said Josiah Reab, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this seventh day of April, in the year of our Lord one thousand eight hundred and forty-seven.

Whereas lately, at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the district of Louisiana, in a suit depending in said circuit court wherein Josiah Reab is plaintiff, and R. R. Barrow is defendant, judgment was rendered against the said R. R. Barrow; and the said R. R. Barrow having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Josiah Reab, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of December next.

Now, the condition of the above obligation is such, that if the said R. R. Barrow shall prosecute his said writ to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

R. R. BARROW, [SEAL.]
CHARLES A. JACOB. [SEAL.]

Sealed and delivered in the presence of—
E. STEVENS.

Approved.

THEO. H. McCALEB, *U. S. Judge.*

Clerk's office, United States circuit court, fifth circuit and district of Louisiana.

I, Edmund Randolph, clerk of the circuit court of the United States, for the fifth circuit and district of Louisiana, do hereby certify, that the foregoing nine pages contain a full, faithful, and complete transcript of the record and proceedings of the case of Josiah Reab vs. R. R. Barrow, No. 1,319, of the records of said court.

In witness whereof I have hereunto signed my name, and affixed the impress of the seal of the said court, at the city of New [SEAL.] Orleans, this 19th day of July, A. D. 1847, and 72d year of American independence.

ED. RANDOLPH, *Cl'k*.

I, Theodore H. McCaleb, judge of the district court of the United States, for the district of Louisiana, and associate judge of the circuit court of the United States, for the fifth circuit and district of Louisiana, do hereby certify, that Edmund Randolph, who signed the foregoing certificate, is the clerk of the said circuit court of the United States, for the fifth circuit and district of Louisiana, and was at the time of so doing, and that full faith and credit are due, and ought to be given, to his attestations as such, and that the foregoing certificate is in due form of law.

Witness my hand and seal, at the city of New Orleans, this first day of September, A. D. 1847.

THEO. H. McCALEB, [SEAL.]
U. S. Judge.

Writ of error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judges of the circuit court of the United States, in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said circuit court, before you, or some of you, between Josiah Reab and Robert Ruffin Barrow, a manifest error hath happened, to the great damage of the said Barrow, as by his complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Su-